

5. EVALUATING WHETHER A COURT INTERPRETER IS QUALIFIED

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A. Definition of a “Qualified Interpreter”

Minnesota statutes define a qualified interpreter as a person who is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the officials before whom the proceeding is taking place.¹

B. Rule 8 of the General Rules of Practice for the District Courts Regarding Interpreters

In order to ensure that interpreters working in the courts are qualified to interpret, the Minnesota Supreme Court promulgated Rule 8 of the General Rules of Practice regarding Court Interpreters in 1995. **(See Appendix B.)**

(1) **Rule 8.01.** Rule 8.01 establishes a Statewide Roster of interpreters eligible to work in court, published by the State Court Administrator. **(See Appendix C.)**

(a) **General Requirements to be Included on the Statewide Roster.** All interpreters must:

- receive a passing score on a written Ethics Test administered by the State Court Administrator;
- complete the interpreter Orientation Program sponsored by the State Court Administrator; and
- file a written Affidavit agreeing to be bound by the *Code of Professional Responsibility for Interpreters in the Minnesota State Court System*.

To implement the Ethics Test requirement, the Minnesota Court Interpreter Program periodically administers a written test based upon the Code of Professional Responsibility. Interpreters who have not attended the Orientation Program are required to pass the Ethics Test before they will be admitted to the Orientation. Interpreters who attended an Orientation Program prior to 1998 must pass the Ethics Test in order to remain included on the Roster.

The two-day Orientation Program **(See Appendix J, “Improving Court Interpreting Services: What the States are Doing”; pp. J-26 – J-34.)** is an introduction to court interpreting. During the Orientation, the Code of

Professional Responsibility is analyzed; the role of the court interpreter is discussed; legal system, procedure and terminology are reviewed; and

¹ Minn. Stat. §§ 546.44, subd. 1 (1998) and 611.33, subd. 1

interpreting skills and techniques are modeled. The program does not evaluate interpreting proficiency or fluency in English or any other language.

- (b) **Sign Language Requirements to be Included on the Statewide Roster.** Sign language interpreters only, must additionally be certified by the *Registry of Interpreters for the Deaf* (RID), with the following generalist certificates:

- CI&CT - Certificate of Interpretation *and* Certificate of Transliteration; *or*
- CSC - Comprehensive Skills Certificate; *or*
- CDI or CDIP – Certified Deaf Interpreter (Provisional)

before being included on the Statewide Roster. Sign language interpreters may take the court interpreter Ethics Test, attend the Orientation and file an Affidavit before *or* after being certified by RID. All sign language interpreters listed on the Roster have the required certification from RID and have fulfilled the general requirements above. If no sign language interpreters are available from the Roster, Rule 8.02(c) nonetheless requires sign language interpreters *not* on the Roster to possess the above generalist certification from RID in order to be eligible to work in court.

Inclusion on the Statewide Roster only indicates that an individual has met the minimum requirements listed above. It does not guarantee competency or proficiency in the specialized skills of court interpreting.

- (2) **Rule 8.02.** Rule 8.02 requires the appointment of certified court interpreters and interpreters on the Statewide Roster. It establishes different categories of interpreters on the Statewide Roster:

- (a) Certified Court Interpreter on Statewide Roster;
- (b) Non-Certified Court Interpreter on Statewide Roster;
- (c) Non-Certified Sign Language Court Interpreter on Statewide Roster;
- (d) Non-Certified Court Interpreter Not on Statewide Roster.

and

Rule 8.02 requires the courts to first make diligent efforts (within and without the judicial district) to appoint a certified court interpreter from the Roster, in those languages for which the Court Interpreter Program has issued certification (thus far, Spanish, Russian, and Hmong). If none are available, then the court must

appoint a non-certified court interpreter who is listed on the Statewide Roster.

For languages in which no certification is available through the Court Interpreter Program, the courts are required to use only interpreters listed on the Statewide Roster, unless none are available. Only after the court has exhausted these requirements may the court appoint an interpreter who is not on the Statewide Roster. Note, however, that all sign language interpreters used by the courts must possess the CI and CT or equivalent certification from RID (see (1)(b) above).

B. Rules on Certification of Court Interpreters

In 1996, the Supreme Court adopted Rules on Certification of Court Interpreters that outline requirements to achieve the status of *Minnesota Certified Court Interpreter*. **(See Appendix E.)** In addition to completing all requirements for inclusion on the Statewide Roster, to be certified an interpreter must establish to the satisfaction of the State Court Administrator:

- age of at least 18 years;
- good character and fitness; and
- passing score on a legal interpreting proficiency examination administered or approved by the State Court Administrator's Office.

To implement its certification program, Minnesota participates in the nationwide *State Court Interpreter Certification Consortium*. **(See Appendix J, "Improving Court Interpreting Services: What the States are Doing"; pp. J-26 – J-34.)** The Consortium develops rigorous proficiency exams using legal and forensic terminology in English and another language. Different parts of the exam evaluate simultaneous, consecutive and sight interpretation skills*. **(See Appendix J, "A Court Interpreting Proficiency Test at a Glance: What It Looks Like and How It Is Developed"; J-24 – J-25.)** The Minnesota Court Interpreter Program has administered Consortium proficiency exams and certified interpreters in *Spanish, Russian, and Hmong*. The Statewide Roster distinguishes interpreters who have achieved the status of Minnesota Certified Court Interpreter by listing them first in the Spanish, Russian, and Hmong languages. Training and exams for Supreme Court certification will continue to be offered by the Minnesota Court Interpreter Program in these and other languages in the future.

*Partial Minnesota Court Certified - The State Court Administrator issues "partial" Minnesota Court Interpreter Certification in simultaneous and consecutive interpretation for candidates who qualify to be exempted from sight interpretation testing. Partial Minnesota Court Certified interpreters shall be presumed as competent as fully certified court interpreters, to provide simultaneous and consecutive interpretation in all court proceedings. However, Partial Minnesota Court Certified interpreters have not been tested or certified in sight interpretation of documents.

The Roster also notes two other certificates:

Federal Court Certified - The State Court Administrator has determined that passing a federal court interpreter certification exam in a specific language shall be considered equivalent to, or more difficult than, passing a legal interpreting proficiency examination developed by the State Court Interpreter Certification Consortium.

Legal Specialist Certificate (SC:L) in Sign Language – The State Court Administrator has recognized the Legal Specialist Certificate as the highest level of certification currently available from the Registry of Interpreters for the Deaf. The SC:L is awarded to sign language interpreters who have demonstrated entry level legal interpreting competence by passing written and performance exams administered by RID. Holders of the SC:L should be considered more qualified to interpret in legal settings than sign language interpreters holding generalist certificates only.

Only the certification process pursuant to the Supreme Court Rules on Certification of Court Interpreters, including court interpreter proficiency exams, provides assurance of competency.

**C. Screening Standards for Court Interpreters;
Determination of Initial Qualifications by Court
Administrators**

Inclusion on the Statewide Roster does not guarantee that non-certified interpreters are competent, fluent with forensic terminology, or proficient in the specialized skills of court interpreting. Consequently, court administrators should use the screening standards developed by the State Court Administrator when selecting non-certified interpreters. **(See Appendix G.)**

E. Voir Dire for Judges

It is the responsibility of trial judges to determine the competence and qualifications of the interpreter for each court proceeding. The Advisory Committee has developed a voir dire to establish the competence and qualifications of the interpreter on the record. **(See Appendix H.)**

6. WHO PAYS FOR COURT INTERPRETERS

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A. Civil Proceedings

Minnesota statutes provide that “[t]he fees and expenses of a qualified interpreter shall be determined by the presiding official and paid by the court. ... The fees and expenses of a qualified per diem interpreter for a court must be paid by the state courts.”² In contrast, and except as provided in section C below, the Rules of Civil Procedure state that “[t]he court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as a cost, in the discretion of the court.”³

B. Criminal Proceedings

Minnesota Statutes state that the official presiding over the criminal proceeding at which the qualified interpreter serves shall fix and order paid all fees and expenses. The fees and expenses “must be paid by the state courts. Payment for any activities requiring interpreter services on behalf of law enforcement, the board of public defense, prosecutors, or corrections agents other than court appearances is the responsibility of the agency that requested the services.”⁴ A judge cannot order the defendant, after conviction, to repay the county for interpreter or translator fees as costs of prosecution.⁵

C. Proceedings (Civil or Criminal) Involving Deaf, Hard-of-Hearing and Persons with Communication Disabilities

Title II of the Americans with Disabilities Act (“ADA”) prohibits courts from including interpreter fees in “court costs.”⁶ The ADA places an obligation on state and local courts to provide and pay for sign language interpreters or other reasonable accommodations (e.g., real-time captioning or an assistive listening system).

In the regulation for Title II of the ADA, the Department of Justice explained that:

The Department has already recognized that imposition of the cost of courtroom interpreter services is impermissible under section 504 [of the Rehabilitation Act of 1973, 29 U.S.C. 794.] The preamble to the Department’s section 504 regulation for its federally assisted programs states that where a court system has an obligation to provide qualified interpreters, ‘it has the corresponding responsibility to pay for the services for the interpreters’ [45 Fed. Reg. 37630 (June 3, 1980)]. Accordingly, recouping the costs of

² Minn. Stat. § 546.44, subd. 3

³ Minn. R. Civ. P. 43.07

⁴ Minn. Stat. § 611.33, subd. 3; see also Minn.R.Crim.P. 26.03, subd. 16.

⁵ State v. Lopez Solis C3-97-681 (Minn. Feb. 4, 1999); see also Minn. Stat. § 631.48.

⁶ 56 Fed. Reg. 35705-06 (July 26, 1991)

interpreter services by assessing them as part of court costs would also be prohibited.⁷

In August 2000, Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency” 65 FR 50121 (August 16, 2000) was issued. Entities which receive federal funds, including Minnesota State Courts, must provide meaningful access to services for LEP persons including providing language assistance at no cost to the LEP person. The Department of Justice issued Guidelines for Courts to consider in implementing this Executive Order. 67 FR 41455-41472.

D. Ancillary Services

Custody examinations, psychiatric examinations performed at State hospitals, pre-sentence investigation services, Rule 20 examinations performed at state hospitals are arguably the responsibility of the state or county office performing the service. These offices, as governmental entities, are also bound by the Federal Law and Regulations cited above.

⁷ Id.